PUBLIC PROSECUTOR v. MUNIANDY

[A. Cr. J. (Suffian J.) February 2, 1963]

[Alor Star — Criminal Appeal No. 90 of 1962]

Criminal Law — Offensive weapon — Possession of "jack knife" — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s.6(1).

Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s.6(1) — Test of "offensive weapon".

The test of whether a knife is an offensive weapon under the provisions of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, is whether, if used as a weapon of offence, such a knife is likely to cause hurt. Applying the above test, a jack knife is an offensive weapon.

Intention is only relevant when considering whether or not the person possessing it had lawful authority or had it for a lawful purpose.

Cases referred to:—

(1) *R.* v. *Jura* [1954] 1 Q.B. 503.

(2) *Woodward* v. *Koessler* [1958] 1 W.L.R. 1255, 1257.

(3) *R.* v. *Petri* [1961] 1 W.L.R. 358.

MAGISTRATE'S CRIMINAL APPEAL.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Suffian J.: The facts in this appeal by the Public Prosecutor are as follows. The Police received information that some labourers who had been dismissed by an estate were going to cause trouble, so a small police party went there. They stayed ten minutes and, finding no trouble, left. On the way out they saw a car P6445 driven by a Malay, entering the estate and going towards the labourers' lines. This was at about 9.50 p.m. They stopped the car and found on board four Tamil passengers including the first and second accused. They recovered an axe from the first accused and a knife from the second accused.

The first accused was charged with having in his possession in a public place without lawful authority an offensive weapon, namely, a "kapak kechik" and the second accused with having in his possession in a public place without lawful authority an offensive weapon, namely a "jack knife", each offence being contrary to section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, No. 43 of 1958.

The learned Magistrate called upon the first accused for his defence and having heard his evidence found him guilty, convicted and sentenced him to one month's imprisonment to be followed by police supervision for a year. The second accused was not called upon for his defence and was acquitted and discharged at the end of the prosecution case and against this order the Public Prosecutor appeals.

The learned Magistrate acquitted on the ground that the weapon in the second accused's possession was not in the same class as a dagger, sword, fire-arm and the like, it was a mere pen-knife which could be bought anywhere, of a type normally carried by Boy Scouts and it was not therefore an offensive weapon.

Leaving aside for the moment the question whether the second accused was in possession with lawful authority or for a lawful purpose, the only question for decision here is, was this knife an offensive weapon.

Section 2 of the Ordinance defines an offensive weapon as including "any instrument which if used as a weapon of offence is likely to cause hurt", an extremely wide definition which on the face of it could include any knife.

Three decisions of the English Court of Criminal Appeals, the earliest of which being *Regina* v. *Jura* (1), afford me some assistance in this matter. In England section 1(1) of the Prevention of Crime Act, 1953, provides: "Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence.....". Sub-section (4) of the section defines an offensive weapon as meaning "any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him". This definition is obscure and Lord Goddard C.J. commenting on it said in *Woodward* v. *Koessler*:— (2)

> "We know perfectly well that the reason why the definition is rather obscure and is not a very easy one in some respects to construe is because one of the weapons, which these young hooligans like to use as much as another, is a bicycle chain. Of course that is not made for injury, but if a boy swinging a bicycle chain and saying 'look out' is not using an offensive weapon, then I do not know what is an offensive weapon."

In a later case, *Regina* v. *Petrie* (3), Salmon J. said at page 361 —

> "It is clear that the definition section of the Act contemplates offensive weapons of at any rate two classes, namely, (a) an article which *per se* is an offensive weapon, that is to say, an article made or adapted for use for causing injury to the person; and (b) an article which, though it is not made or adapted for such use, is carried with the intent so to use it. A cosh, a knuckle-duster and a revolver are examples of articles in the first class. A sandbag and a razor are examples of articles in the second class. No jury could find that a sandbag was in the first class because there would be no evidence to support such a finding. It seems to this Court that the same is true about an ordinary razor. There are some articles which are equivocal, for example, knives. It would always be for a jury to say whether a knife was made or adapted for use for causing injury to the person. It would depend upon the view the jury took of the knife."

Contrasting the two definitions, it would seem that in Malaya it is irrelevant to consider whether or not the particular weapon was made or adapted for use for causing injury to the person. A vegetable knife has not been made for use for causing injury to the person but it would appear to be an offensive weapon, for the sole test here is whether, if used as a weapon of offence, such a knife is likely to cause hurt. Secondly, our definition, unlike that in England, says nothing about the intention of the person who has the weapon; nevertheless intention is, in my view, relevant when considering whether or not he had lawful authority or he had it for a lawful purpose.

Returning to the example of the bicycle chain used by Lord Goddard in the second case cited above, a bicycle chain is a useful and perfectly innocuous article and the bicycle dealer who stocks it commits no offence. Likewise the old Haji who is carrying one home for his disabled bicycle. But I doubt if many courts would consider a youth innocent who had it at night, say, in a public amusement park in Kuala Lumpur, and he had it hidden under his clothes.

Similarly, a wooden pole sharpened at the end, much used in the kampong for fencing, is a common everyday object, but the illustration to section 144 of the Penal Code expressly says that "it is a thing which, if used as a weapon of offence, is likely to cause death." True this illustration is only applicable to sections 144, 148 and 158 of the Code, but nevertheless the same principle applies to the definition in question. In my judgment, it is not necessary that the manner of use of the weapon must be such as is likely to cause hurt; it is merely the nature of the instrument that should be taken into consideration. See *Ratanlal* on the Law of Crimes, 20th edition, page 846, paragraphs numbered 2 and 3.

Dealing now with the facts of this particular appeal, though it is true that the knife is only an ordinary penknife of a type commonly used by Boy Scouts, it is nevertheless in my view an instrument which, if used as a weapon of offence, is likely to cause hurt, that is to say it is an offensive weapon. Whether or not the second accused committed an offence in having it depends on the further question whether or not he had lawful authority or he carried it for a lawful purpose. By virtue of section 106 of the Evidence Ordinance it is for him to prove that he had lawful authority and by virtue of sub-section (2) of section 6 of Ordinance No. 43 of 1958 it is also for him to prove that he carried it for a lawful purpose. For these reasons, it having been proved by the prosecution that the second accused was in possession of the knife, the learned Magistrate should have called upon him for his defence to ascertain whether or not he had such authority or he carried it for a lawful purpose. This case is accordingly remitted to the learned Magistrate with a direction that he call on the second accused to enter on his defence, but on the following slightly amended charge —

> That you on or about the 3rd day of February, 1961, at about 9.50 p.m. did in a public place, namely at the junction of Kampong Bahru, Henrietta Estate, Padang Serai have in your possession an offensive weapon, to wit, a knife, otherwise than with lawful authority or for a lawful purpose and that thereby you have committed an offence punishable under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, No. 43 of 1958.

In laying down the test to be followed in deciding what is an offensive weapon, I am not saying that hereafter the Police should arrest and charge all and sundry who carry a kitchen knife, a parang, a changkol or any other article in common everyday use, and leave it to the Court to decide whether or not they are guilty under the Ordinance. The Police should use their common sense in deciding who should or who should not be charged lest a law enacted to combat lawlessness and gangsterism in congested urban areas should become an oppression of the community generally.

Case remitted to the Magistrate.